mIN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20475 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHHATRAPALSINH @ SATUBHA KALYANSINH SARVAIYA
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR MM TIRMIZI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 01.08.2003 by which he was detained as a dangerous person under

the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention there is a reference to three criminal cases pending against the detenu registered under section 397 of the Indian Penal Code and section 39 of the Indian Electricity Act in connection with power theft as well as for offences punishable under section 420, 461, 506(2) and 114 of the Indian Penal Code.

Mr. N.D. Gohil, learned Assistant Government pleader submitted that though the detention order is dated 1.8.2003, the petitioner was all throughout absconding and ultimately he surrendered before the learned Judicial Magistrate, First, Class, on 30.09.05.

Learned advocate for the petitioner, Mr. Tirmizi vehemently submitted that simply because the detenu is facing criminal cases for alleged electricity theft, it cannot be said that he is a 'dangerous person' and the provisions of the PASA Act is not attracted. Learned advocate for the petitioner submitted that at the most it can be said that the petitioner has violated law and order, and it cannot be said that the petitioner has committed violation of public order as there is nothing to show that public order is disturbed by the said activities of the petitioner.

Mr. N.D. Gohil, learned Assistant Government Pleader submitted that the petitioner is a headstrong person and because of his headstrong activities, public order is disturbed . He further submitted that statement of some witnesses are recorded but their names are not disclosed as it was not in the public interest to disclose their name.

Learned advocate for the petitioner submitted that the petitioner detenu is in judicial custody and is not enlarged on bail.

In the grounds of detention, three criminal cases are shown to be pending against the petitioner in connection with theft of electricity. However, by that, it cannot be inferred that by committing the aforesaid offences, he has violated public order. It cannot be said that public order is disturbed as these are individual cases of theft which may constitute to breach of law and order situation.

Learned advocate for the petitioner relied on the judgment dated 15.11.2005 of a co-ordinate Bench of this Court [Coram: K.M. Mehta, J.] in Special Civil Application No. 19852 of 2005. In the said case, the grounds of detention 15 offences were shown to be registered against the detenu out of which 14 were regarding theft of Hero Honda Motorcycles and one regarding theft of Santro Car. In the said case, while quashing the detention order, the learned

Single Judge observed as under in paragraphs 12, 13 and 14 as under:

> “12. I have considered the submissions of the learned counsel for the petitioner as well as respondent. However, in the present case as stated above fifteen alleged incidents to which Commissioner of Police, Ahmedabad City has made reference to are of theft (fourteen incidents are of theft of 'Hero Honda' motorcycles and one is regarding theft of 'Santro' car) and punishable under Section 379 of Indian Penal Code. Even, there is only one incident wherein it has been alleged that the petitioner had taken knife and beaten one person. Therefore, mere narration of these facts is, even in its totality cannot lead to the conclusion that petitioner is a 'dangerous person'. Thus, all these offences registered or mentioned as the grounds of detention are not relevant to sustain the order of detention for the purpose of preventing petitioner so acting in any manner prejudicial to maintenance of public order. Therefore, there is no material on record which in its potentiality can show that the petitioner disturbed general peace and created sense of terror or insecurity or disturbed normal tempo of life in the locality. This ground is enough to quash and set aside the order of detention made by respondent in this behalf.
>
> 13. The condition precedent for exercising such power the authority must satisfy that the activity of the person is prejudicial to the maintenance of the public order. Even on the basis of the allegations which have been leveled by the detaining authority and the grounds alleged in cannot be said that the activity carried out by the petitioner

> is prejudicial to maintenance of public order, and, therefore, order of detention subject to the satisfaction arrived at by the detaining authority is contrary to law, and therefore, same is illegal and liable to be set aside.
>
> 14. The view which I am taking for setting aside the order of detention is also supported by judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma (supra) as well as judgment of this Court in the case of Ashokbhai Jivraj alias Jivabhai Solanki (supra). As all these offences which have been alleged to be of mere theft. Hence the case of the petitioner squarely falls under the maintenance of 'law and order' and not 'public order'. Thus, subjective satisfaction arrived at by the detaining authority is illegal, null, void and not in accordance with law."

In the instant case, the three offences registered against the petitioner-detenu are for theft of electricity. The mere fact of registration of three offences against the detenu cannot lead to a conclusion that the petitioner is a 'dangerous person' warranting his detention for the purpose of maintaining public order.

In the result, the petition is allowed. Order of detention dated 01.08.03 passed against the petitioner is quashed and set aside. The petitioner is ordered to be released forthwith unless he is required in connection with any other offence.

At this stage, learned advocate for the detenu voluntarily states that the detenu shall not apply for bail till 31st August 2006. This voluntary statement of learned advocate for the petitioner is recorded. It is for the Learned Assistant Government Pleader to inform the concerned authorities about this voluntary statement. If any bail application is preferred even thereafter, it will be open to the authorities to resist the same in accordance with law. It is, however, clarified that so far as the merits of the criminal case pending against the detenu are concerned, this Court has not observed anything and the observations made by this Court in this judgment is limited only to the detention order passed against the detenu.

Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

mathew